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IN THE

Supreme Court of the United States

October Term, 1939.

No. 690.

MINERSVILLE SCHOOL DISTRICT, BOARD OF EDUCATION OF MINERSVILLE SCHOOL DISTRICT,
Consisting of DAVID I. JONES, DR. E. A. VALIBUS,
CLAUDE L. PRICE, DR. T. J. MCGURL, THOMAS
B. EVANS and WILLIAM ZAPP, and CHARLES E.
ROUDABUSH, Superintendent of MINERSVILLE
PUBLIC SCHOOLS,

Petitioners,

v.

WALTER GOBITIS, Individually, and LILLIAN GOBITIS
and WILLIAM GOBITIS, Minors, by WALTER
GOBITIS, Their Next Friend,

Respondents.

**Petition for Writ of Certiorari and Brief in
Support Thereof.**

✓ JOSEPH W. HENDERSON,
THOMAS F. MOUNT,
✓ GEORGE M. BRODHEAD, JR.,

Attorneys for Petitioners.

INDEX FOR PETITION.

	Page
Petition for Writ of Certiorari	1
Summary and Statement of Matter Involved	2
Jurisdiction	3
Opinions Below	3
Questions Presented	3
Reasons for Granting Petition	4

INDEX FOR BRIEF:

	Page
I. The Expulsion of the Gobitis Children Did Not Violate Any Right Under State or Federal Constitutions	7
(a) The enforcement of this resolution did not violate any right of the respondents under the United States Constitution	8
(b) The expulsion of the Gobitis children did not violate any right of respondents under the Pennsylvania Constitution	10
(c) The decision in this case is also in conflict with decisions of state courts of last resort upholding similar requirements to salute the flag \.....	10
II. The Refusal of Pupils to Salute the National Flag at School Exercises Because They Believe To Do So Would Violate the Written Law of Almighty God Is Not Founded on a Religious Belief	11
Conclusion	13

CASES CITED IN PETITION AND BRIEF.

	Page
Coale v. Pearson, 165 Md. 224, 167 Atl. 54 (1933)	9
Coale v. Pearson, 290 U. S. 597 (1933)	4, 9
Commonwealth v. Herr, 229 Pa. 132, 78 Atl. 68 (1910) . . .	10
Estep v. School Dist. of Borough of Canonsburg. . . .	5, 10
Gabrielli v. Knickerbocker, 12 Cal. (2d) 85, 82 P. (2d) 391 (1938)	4, 9, 10
Gabrielli v. Knickerbocker, 306 U. S. 621 (1939)	4, 9
Hamilton v. Regents, 293 U. S. 245 (1934)	4, 9
Hering v. State Board of Education, 118 N. J. L. 566, 117 N. J. L. 455, 194 Atl. 177, 189 Atl. 629 (1937) . . .	4, 10
Hering v. State Board of Education, 303 U. S. 624 (1938)	4, 8
Johnson v. Town of Deerfield, 306 U. S. 621 (1939) . . .	4, 9
Johnson v. Deerfield, 25 F. Supp. 918 (1939)	9
Leoles v. Landers, 184 Ga. 580, 192 S. E. 218 (1937) . . .	4, 10
Leoles v. Landers, 302 U. S. 656 (1937)	4, 8, 13
Nicholls v. Mayor and School Committee of Lynn, — Mass. —, 7 N. E. (2d) 577 (1937)	4, 10, 12
People v. Sandstrom, 279 N. Y. 523, 18 N. E. (2d) 840 (1939)	4, 10, 13

STATUTES IN PETITION AND BRIEF.

	Page
Section 240 (a) of Judicial Code as amended by the Act of February 13, 1925 c. 229, § 1, 43 Stat. 938 (28 U. S. C. A. Section 347 (a))	3
Act of May 18, 1911, P. L. 309, Art. IV, § 404, as amended by the Act of May 29, 1931, P. L. 243, § 9 (24 P. S. § 338)	8
Act of May 18, 1911, P. L. 309, Art. XIV, § 1411 ^a (24 P. S. § 1383)	8
Act of May 18, 1911, P. L. 309, Art. XVI, § 1607 as amended by the Act of May 29, 1931, P. L. 243, § 37, and Act of May 20, 1937, P. L. 732 (24 P. S. § 1551)	8

IN THE
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No. October Term, 1939.

MINERSVILLE SCHOOL DISTRICT, BOARD OF EDUCATION OF MINERSVILLE SCHOOL DISTRICT, CONSISTING OF DAVID I. JONES, DR. E. A. VALIBUS, CLAUDE L. PRICE, DR. T. J. MCGURL, THOMAS B. EVANS AND WILLIAM ZAPF, AND CHARLES E. ROUDABUSH, SUPERINTENDENT OF MINERSVILLE PUBLIC SCHOOLS,

Petitioners,

v.

WALTER GOBITIS, INDIVIDUALLY, AND LILLIAN GOBITIS AND WILLIAM GOBITIS, MINORS, BY WALTER GOBITIS, THEIR NEXT FRIEND,

Respondents.

PETITION FOR WRIT OF CERTIORARI.

The petitioners, Minersville School District, Board of Education of Minersville School District, consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, Thomas B. Evans and William Zapf, and Charles E. Roudabush, Superintendent of Minersville Public Schools, pray that a writ of certiorari be issued to review a final decree of the United States Circuit Court of Appeals for the Third Circuit entered on November 10, 1939, (R. 182) which decree affirmed a final decree of the District Court of the United States for the Eastern District of Pennsylvania restraining the petitioners from enforcing an order expelling William Gobitis and Lillian Gobitis, minors, from the Minersville Public Schools (R. 128).

SUMMARY AND STATEMENT OF MATTER INVOLVED.

The Board of Education of the Minersville School District, Schuylkill County, Pennsylvania, conducting the Minersville Public Schools, adopted a resolution requiring teachers and pupils to salute the national flag at daily exercises and providing that a refusal to salute the flag be regarded as an act of insubordination (R. 45, 121).

At the opening of school exercises, the teachers and pupils of Minersville Public Schools place their right hands on their breasts and speak the following words:

"I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands; one nation indivisible, with liberty and justice for all."

The teachers and pupils while these words are being spoken extend their right hands so as to salute the flag (R. 46, 92).

In 1935 Lillian Gobitis, aged twelve, and William Gobitis, aged ten, (R. 77) were pupils at the Minersville Public School. They are members of Jehovah's Witnesses and, as such, had covenanted to obey Jehovah's commandments, believing that a failure to obey the precepts in the Bible will result in their eternal destruction (R. 122). The Gobitis children refused to salute the national flag as required by the Minersville Public Schools at its daily school exercises because they believed so to do was contrary to the law of God as set forth in Chapter 20 of Exodus (R. 122).

The School Board regarded said refusal as an act of insubordination and on November 6, 1935 Lillian Gobitis and William Gobitis were expelled from the Minersville Public Schools solely for their refusal to salute the national

flag at the daily exercises of the school (R. 46, 47, 122, 123). Since their expulsion, they have been unable to attend the Minersville public schools (R. 47, 123).

JURISDICTION.

The final decree of the United States Circuit Court of Appeals for the Third Circuit was entered November 10, 1939, (R. 182).

The jurisdiction of this Court to review such proceedings on a writ of certiorari is provided by Section 240 (a), of Judicial Code as amended by the Act of February 13, 1925 c. 229, § 1, 43 Stat. 938 (28 U. S. C. A. Section 347 (a)).

The Circuit Court of Appeals has decided an important question of constitutional law in conflict with decisions of your Honorable Court and in conflict with decisions of state courts which decisions are hereinafter specifically set forth under "Reasons for Granting Petition."

OPINIONS BELOW.

On December 1, 1937, an opinion was filed by the Honorable Albert B. Maris, (R. 15) sur Defendants' Motion to Dismiss Bill of Complaint and is reported in 21 F. Supp. 581. The opinion of the Honorable Albert B. Maris sur Pleadings and Proof was filed on June 18, 1938 (R. 120) and is reported in 24 F. Supp. 271. The opinion of the United States Circuit Court of Appeals for the Third Circuit written by Circuit Judge Clark and concurred in by Circuit Judge Biggs and District Judge Kalodner (R. 155), was filed on November 10, 1939, and is unreported.

QUESTIONS PRESENTED.

1. The Board of Education of Minersville School District adopted a resolution requiring teachers and pupils to salute the national flag at daily school exercises and pro-

viding that a refusal be regarded as an act of insubordination. The minor-respondents, members of a sect called Jehovah's Witnesses, while pupils at said schools, refused to salute the flag believing that to do so would violate the written law of Almighty God. Was the expulsion of the minor-respondents for the refusal to salute the flag in violation of any of their rights under the Constitutions of the United States of America and of the Commonwealth of Pennsylvania?

2. Is the refusal of pupils to salute the national flag at a daily exercise of a public school because they believe to do so would violate the written law of Almighty God and result in their eternal destruction founded on a religious belief?


REASONS FOR GRANTING PETITION.

1. The petition should be granted because the United States Circuit Court of Appeals for the Third Circuit has decided an important question of constitutional law concerning freedom of religion which is in conflict with prior decisions of your Honorable Court. *Hamilton v. Regents*, 293 U. S. 245; *Coale v. Pearson*, 290 U. S. 597; *Leoles v. Landers*, 302 U. S. 656; *Hering v. State Board of Education*, 303 U. S. 624; *Johnson v. Town of Deerfield*, 306 U. S. 621; *Gabrielli v. Knickerbocker*, 306 U. S. 621.

2. The decision of the Court below is also in conflict with decisions of state courts dealing with the identical question. *Nicholls v. Mayor and School Committee of Lynn*, — Mass. —, 7 N. E. (2d) 577; *People v. Sandstrom*, 279 N. Y. 523, 18 N. E. (2d) 840; *Leoles v. Landers*, 184 Ga. 580, 192 S. E. 218; *Hering v. State Board of Education*, 118 N. J. L. 566, 117 N. J. L. 455, 194 Atl. 177, 189 Atl. 629; *Gabrielli v. Knickerbocker*, 12 Cal. (2d) 85, 82 P. (2d) 391;

Estep v. School Dist. of Borough of Canonsburg, unreported but docketed in Court of Common Pleas of Washington County, State of Pennsylvania, as of May Term, 1936, No. 51.

3. The determination of the questions presented is of utmost importance to all citizens of the United States and is of especial significance to legislative bodies and school boards in their programs for training citizens in civics and loyalty and for strengthening the morale of the country.

Respectfully submitted, 

MINERSVILLE SCHOOL DISTRICT, BOARD OF
EDUCATION OF MINERSVILLE SCHOOL
DISTRICT, Consisting of DAVID I.
JONES, DR. E. A. VALIBUS, CLAUDE L.
PRICE, DR. T. J. MCGURL, THOMAS B.
EVANS and WILLIAM ZAPP, and
CHARLES E. ROUDABUSH, Superin-
tendent of MINERSVILLE PUBLIC
SCHOOLS

By JOSEPH W. HENDERSON,

Of Counsel

Petition for Writ of Certiorari.

STATE OF PENNSYLVANIA, } ss.:
COUNTY OF PHILADELPHIA, }

JOSEPH W. HENDERSON, being duly sworn according to law, deposes and says that he is counsel for the petitioners herein and that the facts set forth in the foregoing Petition are true and correct to the best of his knowledge, information and belief.

JOSEPH W. HENDERSON.

Sworn to and subscribed before me this thirtieth day of January, A. D. 1940.

HOWARD T. LONG,

(Seal)

Notary Public.

(Phila. Co., Pa.) My commission expires April 4, 1941.

I hereby certify that I have examined the foregoing Petition and that in my opinion it is well-founded and entitled to the favorable consideration of the Court and that it is not filed for the purpose of delay.

JOSEPH W. HENDERSON,

Counsel for Petitioners.

IN THE
SUPREME COURT OF THE UNITED STATES.

No. October Term, 1939.

MINERSVILLE SCHOOL DISTRICT, BOARD OF EDUCATION OF MINERSVILLE SCHOOL DISTRICT, CONSISTING OF DAVID I. JONES, DR. E. A. VALIBUS, CLAUDE L. PRICE, DR. T. J. MCGURL, THOMAS B. EVANS AND WILLIAM ZAPF, AND CHARLES E. ROUDABUSH, SUPERINTENDENT OF MINERSVILLE PUBLIC SCHOOLS,

Petitioners,

v.

WALTER GOBITIS, INDIVIDUALLY, AND LILLIAN GOBITIS AND WILLIAM GOBITIS, MINORS, BY WALTER GOBITIS, THEIR NEXT FRIEND,

Respondents.

**BRIEF IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI.**

For Opinions Below, Jurisdiction, Statement of the Case, and Questions Presented see pages 2 to 4 of the Petition.

**I. THE EXPULSION OF THE GOBITIS CHILDREN
DID NOT VIOLATE ANY RIGHT UNDER STATE
OR FEDERAL CONSTITUTIONS.**

The School Code of the State of Pennsylvania provides that all public schools and private schools in that state shall

teach certain enumerated subjects including "the history of the United States and of Pennsylvania; civics, including loyalty to the State and National Government." Act of May 18, 1911, P. L. 309, Art. XVI, § 1607 as amended by the Act of May 29, 1931, P. L. 243, § 37, and Act of May 20, 1937, P. L. 732 (24 P. S. § 1551) (*Italics ours*).

The resolution, which required teachers and pupils of the Minersville Public Schools to salute the national flag as part of the daily school exercises and provided that a refusal to salute be regarded as an act of insubordination, represents one of the ways of teaching "civics" and "loyalty to the State and National Government". Under the School Code, school boards have the authority to enforce their regulations and to suspend or expel a pupil for misconduct or disobedience. Act of May 18, 1911, P. L. 309, Art. IV, § 404, as amended by the Act of May 29, 1931, P. L. 243, § 9 (24 P. S. § 338) and Act of May 18, 1911, P. L. 309, Art. XIV, § 1411 (24 P. S. § 1383).

The adoption of this resolution and the subsequent expulsion of the Gobitis children for their refusal to salute the national flag was within the power of the school board.

(a) **The enforcement of this resolution did not violate any right of the respondents under the United States Constitution.**

Appeals have been dismissed by your Honorable Court for want of a substantial federal question in cases where the courts of last resort in the States of Georgia and New Jersey held that flag-salute requirements were reasonable and constitutional. *Leoles v. Landers*, 302 U. S. 656 (1937); *Hering v. State Board of Education*, 303 U. S. 624 (1938).

Subsequent to these decisions the Supreme Court of California held that a regulation requiring pupils to salute

the flag was constitutional, *Gabrielli v. Knickerbocker*, 12 Cal. (2d) 85, 82 P. (2d) 391 (1938), and on motion of the appellees your Honorable Court dismissed an appeal from said decision for want of jurisdiction. Moreover, in dismissing said appeal, your Court, "treating the papers whereon the appeal was allowed as a Petition for writ of certiorari," also denied certiorari. *Gabrielli v. Knickerbocker*, 306 U. S. 621 (1939).

In *Johnson v. Deerfield*, 25 F. Supp. 918 (1939) the District Court of the United States for the District of Massachusetts dismissed a bill to declare a statute and similar resolution unconstitutional and your Honorable Court, on direct appeal, affirmed the judgment of the Court below. *Johnson v. Deerfield*, 306 U. S. 621 (1939).

Prior to the decisions of your Honorable Court in the four above mentioned "flag cases", your Honorable Court had held that minor-plaintiffs who had been suspended from the University of California because they refused for alleged religious reasons to take a required course in military training could not compel the regents of the university to reinstate them as students without their taking the prescribed courses in military training. *Hamilton v. Regents*, 293 U. S. 245 (1934). In *Coale v. Pearson*, 165 Md. 224, 167 Atl. 54 (1933) the Court of Appeals of Maryland had also held that a university might suspend students refusing to take regular courses in military training even though the refusal was based on sincere and conscientious religious objections, and your Honorable Court in *Coale v. Pearson*, 290 U. S. 597 (1933), dismissed an appeal from said state decision for want of a substantial federal question.

- (b) The expulsion of the Gobitis children did not violate any right of respondents under the Pennsylvania Constitution.**

The only decision by a court of the Commonwealth of Pennsylvania in which this precise question has been presented is the unreported case of *Estep v. School District of the Borough of Canonsburg et al.*, docketed in the Court of Common Pleas of Washington County, as of May Term 1936, No. 51. In that case the expulsion of a minor-plaintiff from a public school because he had refused to salute the flag was upheld and the plaintiff's writ of alternative mandamus was quashed. No appeal was taken from this decision.

However, the appellate courts of Pennsylvania have held other analogous statutes, ordinances, rules and regulations constitutional. See *Commonwealth v. Herr*, 229 Pa. 132, 78 Atl. 68 (1910), and the cases cited therein.

- (c) The decision in this case is also in conflict with decisions of state courts of last resort upholding similar requirements to salute the flag.**

The courts of last resort of the States of New York and Massachusetts, as well as of Georgia, New Jersey, and California, have also sustained the expulsion of members of Jehovah's Witnesses from public schools for refusal to salute the national flag at school exercises. *People v. Sandstrom*, 279 N. Y. 523, 18 N. E. (2d) 840 (1939); *Nicholls v. Mayor and School Committee of Lynn*, 7 N. E. (2d) 577 (Mass. 1937); *Leoles v. Landers*, 184 Ga. 580, 192 S. E. 218 (1937); *Hering v. State Board of Education*, 118 N. J. L. 566, 117 N. J. L. 455, 194 Atl. 177, 189 Atl. 629 (1937); *Gabrielli v. Knickerbocker*, 12 Cal. (2d) 85, 82 P. (2d) 591 (1938).

We submit that the Courts-below failed to distinguish the present controversy from those four cases in which your Honorable Court dismissed appeals and that the Courts-below also disregarded the decisions of those state courts which had theretofore considered the precise question presented in this case.

It makes no difference whether saluting the national flag be required by a statute of a state legislature or by an ordinance or regulation of a duly authorized municipal subdivision of the state. The fundamental question is the same in each case. The fact that the Supreme Court of Pennsylvania has not considered this precise question while the highest courts in other states did pass upon similar statutes or regulations in the above discussed cases has no bearing on this case. The respondents themselves chose the Federal Court as the forum in which to have this controversy determined, and opposed a motion to dismiss the bill for want of jurisdiction. If they chose, they could have instituted proceedings in a state court and have had the Supreme Court of Pennsylvania adjudicate this precise question.

II. THE REFUSAL OF PUPILS TO SALUTE THE NATIONAL FLAG AT SCHOOL EXERCISES BECAUSE THEY BELIEVE TO DO SO WOULD VIOLATE THE WRITTEN LAW OF ALMIGHTY GOD IS NOT FOUNDED ON A RELIGIOUS BELIEF.

Teachers and pupils of Minersville Public Schools under the resolution of the Board of Education are required at the opening of school exercises to place their right hands on their breasts and speak the following words:

"I pledge allegiance to the flag of the United States of America, and to the Republic for which it

stands; one nation indivisible, with liberty and justice for all."

The teachers and pupils while these words are being spoken extend their right hands so as to salute the flag (R. 46, 92).

Members of Jehovah's Witnesses, having covenanted to obey Jehovah's commandments, believe that a failure to obey the same will result in their eternal destruction (R. 122).

However, as we understand this exercise, the act of saluting the national flag at the daily school exercises in no way concerns the religious beliefs of a pupil. While a member of Jehovah's Witnesses may mistakenly believe that saluting the flag contravenes the law of God as set forth in the 20th chapter of Exodus, it does not follow that said pupil's refusal to salute the flag is based on a religious belief.

The act of saluting the national flag "is a ceremony clearly designed to inculcate patriotism," *Nicholls v. Mayor and School Committee of Lynn*, 7 N. E. (2d) 577, 579 (Mass. 1937).

"The salute and pledge do not go beyond that which, according to generally recognized principles, is due to government. There is nothing in the salute or the pledge of allegiance which constitutes an act of idolatry, or which approaches to any religious observance. It does not in any reasonable sense hurt, molest, or restrain a human being in respect to 'worshipping God' within the meaning of words in the Constitution. The rule and statute are well within the competency of legislative authority. They exact nothing in opposition to religion. They are directed to a justifiable end in the conduct of education in public schools." *Nicholls v. Mayor and School Committee of Lynn*, *supra*, at page 580.

When pupils are saluting the national flag, they are not bowing down in worship of an image in place of Jehovah. The salute is merely an act by which the pupils may show their respect for the government "similar to rising to a standing position upon hearing the National Anthem being played." *Leoles v. Lander*, 184 Ga. 580, 587, 192 S. E. 218, 222 (1937). Neither act could be denominated as a religious rite.

There is nothing in saluting our flag which approaches any religious observance. No religious word whatsoever is uttered in the pledge which only excites patriotic fervor and loyalty. The saluting of the flag is no more than an acknowledgment of the *temporal* sovereignty of this nation and has nothing whatsoever to do with a person's religious feelings and is in no way an acknowledgment of the *spiritual* sovereignty which the members of Jehovah's Witnesses ascribe to Jehovah God. The salute imposes no obligations whatsoever affecting religious worship and does not in any way concern the views which anyone may have concerning his Creator or concerning his relation to his Maker.

As stated in *People v. Sandstrom*, 279 N. Y. 523, 529, 18 N. E. (2d) 840, 842 (1939):

"Saluting the flag in no sense is an act of worship or a species of idolatry, nor does it constitute any approach to a religious observance. The flag has nothing to do with religion, and in all the history of this country it has stood for just the contrary, namely, the principle that people may worship as they please or need not worship at all."

CONCLUSION.

We submit that the decision by the Court below in this case is in conflict with prior decisions of your Honorable

Court, as well as in conflict with decisions of state courts dealing with the same question, and that the Gobitis children were legally expelled from the public schools at Minersville for their refusal to salute the national flag.

The petitioners' prayer for writ of certiorari should therefore be granted.

Respectfully submitted,

JOSEPH W. HENDERSON,

THOMAS F. MOUNT,

GEORGE M. BRODHEAD, JR.,

Attorneys for Petitioners.

Philadelphia, Pennsylvania

January 30, 1940

